

DOCUMENT RESUME

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[Claim for Proceeds of Tax Refund Check]. B-187957. July 1, 1977. 4 pp.

Decision re: Virginia Waatti; by Robert P. Keller, Deputy Comptroller General.

Issue Area: Tax Administration (2700).

Contact: Office of the General Counsel: General Government Matters.

Budget Function: General Government: Central Fiscal Operations (803).

Organization Concerned: Department of the Treasury: Bureau of Government Financial Operations; Internal Revenue Service.

Authority: 31 C.F.R. 240.5. 51 Comp. Gen. 668. 51 Comp. Gen. 672. Universal Commercial Code 3-116. Universal Commercial Code 4-207(1)(a). Clearfield Trust Co. v. United States, 318 U.S. 363 (1943). National Metropolitan Bank v. United States, 323 U.S. 454 (1944).

The Assistant Director of the Division of Check Claims of the Department of the Treasury's Bureau of Government Financial Operations referred to GAO's Claims Division the claim of Virginia Waatti for one-half of the proceeds of a Treasury check payable to her and her former husband, Irving J. Waatti. The former husband admitted having the claimant's endorsement forged. The valid endorsements of both copayees were required for negotiation of the check. Reclamation proceeds should be held until the competing claims of the husband and wife are resolved by them. (Author/SC)

Feldman
G.A.N.

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-187957

DATE: JUL 1 1977

**MATTER OF: Virginia Watti - Claim for Proceeds of Tax
Refund Check**

DIGEST: The forgery of claimant's endorsement by the claimant's former husband and the negotiation of joint income tax refund check issued in the name of claimant and husband, not yet divorced, did not extinguish the liability of the United States or pass title to the endorsing bank, which is subject to reclamation proceedings as, absent a statute or court decision to the contrary, joint payees may not be considered as one person or entity. Thus, valid endorsements of both were required for negotiation of the checks. Reclamation proceeds should be held until competing claims of husband, and wife are resolved by those parties.

By letter of May 13, 1973, the Assistant Director, Division of Check Claims, Bureau of Government Financial Operations (Bureau), Department of the Treasury, referred to our Claims Division the claim of Virginia Watti for one-half of the proceeds of Treasury check No. 73,603,905 for \$3,310.63, dated March 30, 1973, symbol 2072, to the order of Irving J. and Virginia Watti.

The check, representing an income tax refund, was issued on the basis of a joint income tax return filed by Irving J. and Virginia Watti for the taxable year ending December 31, 1972. On September 14, 1973, copayee Virginia Watti filed a claim against the United States for one-half the proceeds of the check, alleging that the endorsement of her name on the item is a forgery. The Treasury Department instituted reclamation proceedings on November 12, 1973, against the First National Bank, Petoskey, Michigan, and referred the matter to the United States Secret Service for investigation.

The Secret Service investigation disclosed that the check was received by copayee Irving J. Watti. In a signed sworn statement of December 15, 1973, Irving Watti admitted that a friend signed copayee Virginia Watti's name and that he negotiated the check. He alleged, however, that the proceeds of the check were used to pay taxes and bills jointly incurred by him and copayee

Virginia Wastti. Mrs. Wastti allegedly initially acknowledged that the check proceeds were probably used to pay joint debts incurred by the couple. On May 14, 1974, Treasury denied Virginia Wastti's claim on the basis of this information.

Virginia Wastti later denied that she told the Secret Service that the check proceeds were probably used to pay debts jointly incurred by the couple. Virginia Wastti and Irving Wastti were separated when the check was received. The check was negotiated prior to the Property Settlement Agreement dated April 17, 1973, which was incorporated into a Judgment of Divorce filed April 18, 1973. She further contends, in effect, that she is no longer liable for any jointly incurred debts. In support of her position, she submitted a copy of the Property Settlement Agreement which provides that:

"It is the intent of Wife to transfer all of her right, title and interest in and to the business heretofore conducted in and upon Lot 15 described above by Husband and Wife and known as 'Andy's Cafe' and also including all furniture, fixtures, restaurant equipment, and all other personal property now located in said premises. Husband assumes all debts of the business known as 'Andy's Cafe' and all debts of the parties hereto in connection with the operation of said business as well as all debts incurred during the course of the marriage."

On October 29, 1974, the Bureau informed the presenting bank, First National Bank, Petoskey, Michigan, that although it was liable for the full amount for the breach of its endorsement guaranty, the reclamation request was reduced to \$1,655.31 since Virginia Wastti had agreed to accept one-half the amount in settlement of the claim. The bank protested, stating that at the time the check was negotiated, a bank money order for \$1,236.09 was purchased with part of the proceeds and was issued in the names of Irving J. and Virginia Wastti. This money order was forwarded to the Internal Revenue Service (IRS) for payment of delinquent taxes. The bank states it will return the money order to IRS as the last endorser if it is forced to refund one-half of the proceeds of the Treasury check.

The Bureau forwarded the check and file for our review and decision concerning the merits of the claim and our advice as to reclamation action.

Against a statute or court decision to the contrary, joint payees (husband and wife) of a joint income tax refund check may not be considered as one person or entity, so that the valid endorsement of both is required on the check for the purposes of negotiation. 31 Corp. Sec. 648 (1972). Furthermore, section 3-116 of the Uniform Commercial Code requires that all joint payees must endorse and discharge a negotiable instrument. While the Uniform Commercial Code is not necessarily determinative with respect to Government checks, the Government should follow the Code to the maximum extent practicable in the interest of uniformity where not inconsistent with Federal interest, law or court decisions. 31 *id.* 648 (1972). Consequently, the endorsement of the name of both payees of a check by one of them is invalid and passes no title to the endorser in the absence of authority from the other payee. 31 *id.* 648 (1972).

In light of the above, Irving Weatti's action in having a friend endorse his wife's name constituted an unauthorized endorsement and passed no title to First National Bank, unless he had authority from his wife to endorse. It is undisputed that no such authority was shown. Moreover, the endorsement of the First National Bank on the check reads "For my bank, P.R.G. First National Bank and Trust Co. Potosky, Michigan." Inasmuch as "P.R.G." is a standard abbreviation for "prior endorsements guaranteed," such endorsements constitute express guarantees. Also, 31 C.F.R. § 248.3 (1976) provides that the Treasurer shall have the right to demand a refund from the presenting bank of the amount of a paid check if, after payment, the check is found to bear a forged or unauthorized endorsement. See Clearfield Trust Company v. United States, 318 U.S. 363 (1943), National Automatic Bank v. United States, 325 U.S. 454 (1944). The presenting bank can pursue its rights against the prior endorser, Mr. Weatti, who presented the check bearing a forged endorsement. See, U.C.C. 4-207(1)(a).

That portion of the Property Settlement Agreement included in the divorce decree would not appear to preclude or bar the enforcement of any liability of the cashing endorser on the check, since the claim is one against the United States which made payment on the forged check and has not been discharged from its obligation for payment on the instrument. See 31 *id.* 648, 672 (1972).

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Thus, the United States' obligation to refund the tax overpayment has not been discharged. The bank, having guaranteed the endorsements, is liable to the United States for the full amount of the tax refund check; recoupment proceedings against the bank in the amount of \$3,310.63 should therefore be resumed. (The bank will presumably seek recoupment from Mr. Wastti.) On the other hand, the bank is quite right in asserting that the United States has a legal obligation to it for the amount of the money order (\$1,236.09) which it accepted with only Mr. Wastti's endorsement.

With the full amount of the original check in hand, the United States should set off any joint debts the Wasttis may owe the Government, such as the other tax liability for which the money order was to have been payment. The remaining money should then be held until the copayers have determined between them how it should be distributed. The Government cannot administratively make that determination, should either party feel he or she is entitled to more than one-half the proceeds.

R.F.KELLER

Deputy Comptroller General
of the United States